

Chapter 71

CABLE TELEVISION

[HISTORY: Adopted by the Mayor and Council of the City of Seat Pleasant as indicated in article histories. Amendments noted where applicable.]

GENERAL REFERENCES

Public entertainment — See Ch. 80.

ARTICLE I

Procedures for and Conditions of Grant [Adopted 1-12-1981 by Ord. No. 81-01]

§ 71-1. Title.

This chapter may be cited as the "Seat Pleasant Cable Television Franchise Chapter" or, alternatively, "Seat Pleasant CATV Franchise Chapter."

§ 71-2. Definitions and word usage.

- A. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. [Amended 2-14-1994 by Ord. No. 94-01]
- B. For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given herein unless the context clearly indicates that another meaning is intended:

AGENCY — The City Council or the person, department or agency designated by the Council, by resolution, to act for it in administrative matters relating to cable television.

AUXILIARY SERVICES — Any communications service in addition to regular subscriber services provided by the CATV franchisee, including but not limited to pay television, burglar alarm service, data transmission, facsimile service, home shopping service, etc.

CABLE TELEVISION SYSTEM or CATV SYSTEM — Any facility that, in whole or part, receives, directly or indirectly, over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more television or radio stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service.

CHANNEL — A band of frequencies six megahertz wide in the electromagnetic spectrum capable of carrying either one audiovisual television signal and a few nonvideo signals or a large number of nonvideo signals.

FEDERAL COMMUNICATIONS COMMISSION or FCC — The present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created

by the United States Congress.

FRANCHISE — An authorization granted by the City which permits the construction, operation and maintenance of a cable television system within the franchise area under terms not inconsistent with this chapter.

FRANCHISE AREA — That portion of the franchise entity for which a franchise is granted under the authority of this chapter. The "franchise area" may or may not be coterminous with the franchise entity.

FRANCHISE AUTHORITY — The governing body of the franchise entity.

FRANCHISE ENTITY — The City of Seat Pleasant, Maryland, as presently constituted and including any area henceforth added thereto during the terms of any franchise granted hereunder.

GRANTEE — Any entity, its successors, heirs or assigns who or which shall be awarded a franchise in accordance with the provision of this chapter.

GROSS REVENUES — Revenues derived directly or indirectly by a grantee from both regular subscriber service and auxiliary services.

GROSS SUBSCRIBER REVENUES — Those revenues derived directly or indirectly by a grantee from the supplying of regular subscriber service, that is, the installation fees, disconnect and reconnect fees and fees for regular cable benefits, including the transmission of broadcast signals and access and organization channels if utilized. It does not include revenues derived from auxiliary services or from any taxes whether or not passed on to users, per program or per channel charges, leased channel revenues, advertising revenues or any other income derived from the system.

MAJOR STOCKHOLDER — A beneficial owner, directly or indirectly, of 10% or more of the issued and outstanding voting stock of any corporation.

PERSON — Any individual, firm, corporation, association or other legally recognized entity.

PUBLIC WAY — The surface of and the space above and below any public street, avenue, highway, boulevard, concourse, driveway, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, alley, right-of-way, public utility easement and any other public ground or water subject to the jurisdiction and control of the franchise entity.

REGULAR SUBSCRIBER SERVICE — That cable television service regularly provided to all subscribers. It includes all broadcast signal carriage and FCC-required access channel carriage, including origination programming. It does not include specialized programming for which a per channel charge is made.

SUBSCRIBER — Any person receiving regular subscriber service.

§ 71-3. Franchise required; violations.

- A. It shall be unlawful for any person to own, operate or solicit subscribers for any cable television system without first having obtained a franchise from the City Council.
- B. Violation of this section shall be a municipal infraction and punishable as set forth in §

§ 71-4. Limitations of franchise.

- A. The franchise granted under this chapter shall be nonexclusive, and nothing herein shall be construed to prevent the franchise authority from granting identical or similar franchises to more than one person within all or any portion of the franchise entity.
- B. Any grantee shall, at all times during the life of this franchise, be subject to the lawful exercise of the franchise entity's police power and such reasonable regulations as the franchise authority may subsequently promulgate thereunder. Nothing contained in this chapter shall be deemed to prohibit in any way the right of the Council to levy nondiscriminatory occupational license taxes on any activity conducted by the grantee.
- C. All privileges prescribed by this franchise shall be subordinate to any prior lawful occupancy of the public streets, and the franchise authority reserves the right to reasonably designate where a grantee's facilities are to be placed within the public ways.
- D. The franchise shall be a privilege which is personal to the original grantee. It shall not be sold, transferred, leased, assigned or disposed of, in whole or in part, either by sale, merger, consolidation or otherwise, without prior consent of the franchise authority expressed by resolution, and then only under such conditions as may therein be prescribed. Any such proposed transfer or assignment shall be made only by an instrument in writing, which shall include an acceptance of all terms and conditions of the franchise by transferee, a duly executed copy of which shall be filed with the agency within 30 days after any such transfer or assignment.
- E. Nothing herein shall be deemed to in any way impair or affect the right of the City Council to acquire the property of the grantee, either by purchase or through the exercise of the right of eminent domain, at a price reflective of its fair market value as an ongoing concern, and nothing herein shall be construed to constitute a waiver or bar to the exercise of any governmental right or power of the City Council.
- F. The granting of any franchise shall be based upon the franchise authority's judgment as to whether it will serve the public's interest, the applicant's construction, technical and financial plans and arrangement and the benefits to the welfare and safety of the City and its citizens. Such judgment shall be discretionary, and no provision of this chapter shall require the granting of a franchise.

§ 71-5. Liability and indemnification.

- A. The grantee shall pay and, by its acceptance of a franchise, specifically agrees to pay any and all damages or penalties which the City may be legally required to pay as a result of the grantee's installation, operation or maintenance of a franchise cable television system under this chapter, whether or not the acts or omissions complained of are authorized, allowed or prohibited by the City.
- B. The grantee shall also pay all expenses incurred by the City in defending itself with regard to any and all damages and penalties mentioned in Subsection A above. These expenses shall include all out-of-pocket expenses, including reasonable attorneys' fees and the

reasonable value or services rendered by any employee of the City.

- C. The grantee shall maintain, throughout the term of the franchise, liability insurance insuring the City and the grantee with regard to all damages mentioned in Subsection A above caused by the grantee or its agents in such amounts as may be set forth in franchise.

§ 71-6. Technical requirements.

Any CATV system to be constructed by a grantee shall be installed, maintained and operated at all times in full compliance with the technical and channel capacity standards of the Federal Communications Commission. The results of annual performance tests conducted in accordance with § 76.601(c) of the FCC rules (or such other section of the rules as shall incorporate its substance) shall be retained for at least five years and available for inspection by the City.

§ 71-7. Safety requirements.

The grantee shall, at all times:

- A. Install and maintain its wires, cable, fixtures and other equipment in accordance with the requirements of the City and county building, electrical, fire, health and plumbing codes and in such manner that they will not interfere with any installations of the City.
- B. Keep and maintain in a safe, suitable, substantial condition and in good order and repair all structures, lines, equipment and public ways or places of the City, wherever situated or located.

§ 71-8. Service standards; resolution of complaints.

Throughout the life of its franchise, a grantee shall:

- A. Maintain all parts of its system in good condition and in accordance with standards generally observed by the cable television industry. Sufficient employees shall be retained to provide safe, adequate and prompt service for all of its facilities.
- B. Maintain a conveniently located business office and service center to which subscribers may telephone without incurring added message units or toll charges. This office shall be open during all usual business hours and be so operated that complaints and requests for repairs or adjustments may be received by telephone at any time when any television signals are being broadcast.
- C. Dispatch personnel to investigate all service complaints and equipment malfunctions within 24 hours and strive to resolve such complaints as promptly as possible. Planned interruption of service shall be only for good cause. Insofar as possible, planned service interruptions shall be preceded by notice, be of brief duration and occur during minimum viewing hours.
- D. Maintain a complete list of all complaints received and the measures taken to resolve them in a form to be approved by agency. This list shall be available to the agency upon request.
- E. Permit the agency to inspect and test the system's technical equipment and facilities upon reasonable (12 to 24 hours) notice.

§ 71-9. Conditions for use of public ways.

- A. Any pavements, sidewalks, curbing or other paved area taken up or any excavations made by a grantee shall be done under the supervision and direction of the agency under permits issued for work by the proper officials of the City and shall be done in such manner as to give the least inconvenience to the inhabitants of the City. The grantee shall, at its own cost and expense and in a manner approved by the agency, replace and restore any such pavements, sidewalks, curbing or other paved areas in as good condition as before the work involving such disturbance was done and shall also make and keep full and complete plats, maps and records showing the exact locations of its facilities located within the public streets, ways and easements of the franchise entity. These maps shall be available for inspection at any time during business hours by the agency.
- B. The grantee shall, at its expense, protect, support, temporarily disconnect, relocate or remove any of its property when required by the City by reason of traffic conditions, public safety, road construction, change of street grade, installation of sewers, drains, water pipes, power lines, signal lines, tracks or any other type of municipal improvements; provided, however, that the grantee shall, in all such cases, have the privilege of abandoning any property in place. If the City requests substantial relocation, it shall compensate the grantee in the amount of its relocation costs.
- C. The grantee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than 48 hours' advance notice to arrange for such temporary wire changes.
- D. The grantee shall have authority to trim the trees upon and overhanging the public street so as to prevent the branches of such trees from coming in contact with the wires and cables of the grantee, except that the grantee may have the overhanging branches removed by a contractor at the option of the City, and the expense shall be paid by the grantee. [Amended 2-14-1994 by Ord. No. 94-01]
- E. In all sections of the franchise area where the cable, wires or other similar facilities of public utilities are placed underground, the grantee shall place its cables, wires or other like facilities underground to the maximum extent that existing technology reasonably permits.

§ 71-10. Bond.

Concurrently with the acceptance of its franchise, a grantee shall file with the City a bond with an acceptable surety in an amount designated by the City to indemnify the City against any losses it may suffer in the event that the grantee fails to comply with one or more of the provisions of its franchise. Said bond shall be obtained at the sole expense of the grantee and remain in effect for the full term of the franchise or any renewal thereof, plus an additional six months thereafter.

§ 71-11. Franchise fee.

The City shall be entitled to collect a franchise fee in such amount as may be from time to time established by the Council for each franchise granted.

§ 71-12. Acts beneficial to subscribers.

The City shall be empowered to include as part of any franchise such terms and conditions as it deems beneficial to the subscribers in the franchise area, including the regulation of rate changes to such subscribers.

§ 71-13. Public service requirements.

A grantee shall:

- A. Provide at least one service outlet to all municipal facilities, libraries and public schools within its franchise area at no cost to the City, library or schools involved.
- B. Make its facilities immediately available to the City upon request during the course of any emergency or disaster.

§ 71-14. Duration of franchise.

The Council shall establish the duration of each franchise granted under this chapter and the terms and conditions for any renewal thereof.

§ 71-15. Tampering; unauthorized connections.

- A. It shall be unlawful for any person, without the consent of the owner of the CATV wires, cable or equipment, to willfully tamper with, remove or injure any cable, wires or equipment used for distribution of television signals, radio signals, pictures, programs or sound within the City.
- B. It shall be unlawful for any person to make or use a connection, whether physically, electrically, acoustically, inductively or otherwise, with any part of a franchised cable television system within the City for the purpose of enabling himself/herself or others to receive any television signal, radio signal, picture, program or sound without authorization of the CATV franchise holder, i.e., the owner of said system.

§ 71-16. Continued use of individual antennas protected.

This chapter shall not prohibit the erection or continued use of individual television antennas nor require any person to receive cable television service or to connect with a cable television system.

§ 71-17. Delegation of powers.

The Mayor and Council shall have the right to delegate any right, benefit, duty, obligation or power under this chapter to the agency or any employee, officer or department of the City.

§ 71-18. Promulgation of rules.

The Council, and the Mayor as chief executive officer of the City under the Charter, shall have the authority to promulgate such rules and regulations as are necessary to implement, administer and enforce this chapter and any franchise granted hereunder.

§ 71-19. Franchise application procedures.

- A. The City Council may award a CATV franchise hereunder upon an application or by selecting among applicants, if more than one proposal is filed, upon procedures, specification of filing fee and time(s) for submission as may be specified in a resolution adopted by the Council hereunder. The resolution shall give notice of the requirements of Subsections B and C hereof, in addition to setting forth such other filing requirements and franchise criteria as the Council may determine.
- B. An application for a CATV franchise hereunder shall be made in writing, subscribed by the applicant, if an individual, or by a partner, if a partnership, or by an officer of the corporation, if a corporate entity. The application shall contain a certification that the facts and matters therein set forth, together with exhibits or supplemental material submitted therewith, are true, complete and correct to the best of the subscriber's knowledge and belief and are made in good faith and that willful false statements may be deemed perjurious and disqualify the applicant from further consideration, which sanction will be in addition to and not in lieu of any provision for willful false submissions to a governmental entity.
- C. An application for a CATV franchise shall be accompanied by a nonrefundable application fee in such amount as may be specified by the Council, which amount shall be used by the City of Seat Pleasant to offset expenses incurred in the application evaluation and franchising procedures.

§ 71-20. Granting of franchise.

The granting of any franchise shall be based upon the Council's judgment as to whether it will serve the public interest and welfare and will include the Council's evaluation of the applicant's qualifications, construction schedule and its technical, financial and CATV service plans and arrangements and the benefits from the applicant's proposal to the welfare and safety of the City and its citizens as may be determined by the Council. Such judgment shall be discretionary, and no provision of this chapter shall require the granting of a franchise.

§ 71-21. Forfeiture of franchise.

- A. In addition to the rights and power pertaining to the City contained in any franchise, the City shall have the right to terminate and cancel a franchise if the grantee:
 - (1) Refuses to obey any duly promulgated rule, order or resolution of the Council, Mayor or agency made pursuant to a franchise under this chapter.
 - (2) Becomes insolvent, unable or unwilling to pay its debts or is adjudged as bankrupt.
 - (3) Attempts to evade any of the provisions of a franchise or practices any fraud or deceit upon the City.

- B. Before any franchise may be terminated or canceled under this section, the grantee shall be entitled to a hearing before the City Council.

§ 71-22. Violations and penalties. [Amended 2-14-1994 by Ord. No. 94-01]

Any person violating any provision of this chapter shall be deemed guilty of a municipal infraction and, upon conviction, shall be subject to a fine of \$400. A violation which continues or is repeated shall be treated as a separate violation for each day on which it occurs and shall be punishable as such.

ARTICLE II
Franchise Application Fee
[Adopted 2-12-2007 by Ord. No. 07-01]

§ 71-23. Amount; use.

Pursuant to § 71-19C of the Seat Pleasant City Code, any application for a CATV franchise shall be accompanied by a nonrefundable application fee in an amount no less than \$5,000 to be used by the City to offset expenses incurred in the application evaluation and franchising process.